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Federal Communications Commission  
Washington, D.C. 20554

DISPATCHED BY  
MM Docket No. 96-64

In the Matter of

Amendment of Section 73.202(b), RM-8747  
Table of Allotments,  
FM Broadcast Stations.  
(Boulder and Lafayette, Colorado)

### NOTICE OF PROPOSED RULE MAKING

Adopted: March 8, 1996;

Released: March 29, 1996

Comment Date: May 21, 1996

Reply Comment Date: June 5, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Salem Media of Colorado, Inc. ("petitioner"), licensee of Station KRKS-FM, Channel 234C, Boulder, Colorado, seeking the reallocation of Channel 234C from Boulder, to Lafayette, Colorado, as that community's first local aural transmission service, and the modification of its license accordingly. Petitioner stated its intention to apply for Channel 234C if it is reallocated to Lafayette, as requested.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.<sup>1</sup> In support of the proposal, petitioner states that the requested reallocation of Channel 234C from Boulder, an urbanized area as defined by the U.S. Census, to the incorporated community of Lafayette, which is located outside of the Boulder urbanized area, is mutually exclusive with its existing authorization. The distance between Boulder and the petitioner's specified site at Lafayette is 45.3 kilometers (28 miles) whereas a distance of 290 kilometers (180 miles) is

required in this instance.<sup>2</sup> Moreover, petitioner advises that from the present licensed site of Station KRKS-FM at Boulder, 70 dBu coverage is provided to the majority of Denver, Colorado, which is also an urbanized area. The reallocation to Lafayette would result in 100% coverage of the Denver urbanized area.

3. In further support of its proposal petitioner states that the adoption of its proposal would result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992),<sup>3</sup> as the reallocation would enable it to provide Lafayette (population 14,548)<sup>4</sup> with its first local aural transmission service, and would provide new reception service to 117,109 persons in an area comprising 13,206 square kilometers. Further, petitioner advises that Boulder will retain four local transmission services<sup>5</sup> and will continue to receive 1 mV/m or greater service from fifteen full-service commercial FM stations as well as primary service (2 mV/m) during daytime hours from 17 AM stations. Additionally, petitioner states that six AM stations provide primary service to less than the entire area of Boulder. Petitioner advises that although the proposed reallocation would result in the loss of service to an extremely small area to the northeast of Boulder (population 83,312), the loss area lies within the predicted coverage area of more than five fulltime aural services.<sup>6</sup>

4. In accordance with recent Commission policy, if a proponent intends to locate its authorized facility from a rural community to a suburban community that is adjacent to an urbanized area, and from which its intended operation would place a city grade (70 dBu) signal over 50% or more of the urbanized area, the petitioner is required to demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference. See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995). This proposal presents yet another novel approach to the Commission's *Change of Community* policies. In this instance petitioner is proposing to move from the Boulder urbanized area to Lafayette, which is located between the Boulder and Denver urbanized areas. According to a staff analysis, Station KRKS-FM's 70 dBu signal presently encompasses approximately 95% of the Denver urbanized area. Operation from petitioner's intended site at Lafayette would result in the provision of a 70 dBu signal over the entire Denver urbanized area. Under the circumstances, we do not believe that based upon the degree of coverage presently provided over Denver by Station KRKS-FM that the proponent's request to change its community of license is subject to the provision of additional information responsive to a *Tuck* analysis to

<sup>1</sup> See *Modification of FM License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990).

<sup>2</sup> Coordinates at the site specified by the petitioner for a transmitter site at Lafayette are 39-40-35 and 105-29-09. Coordinates at the licensed site of Station KRKS-FM at Boulder are 40-04-19 and 105-21-14.

<sup>3</sup> The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (co-equal weight is given to priorities (2) and (3)).

<sup>4</sup> Population figures reported herein were taken from the 1990 U.S. Census.

<sup>5</sup> The Commission has stated "The public has a legitimate expectation that existing service will continue, and this expecta-

tion is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another regardless of whether the service removed constitutes transmission service, a reception service, or both." *Change of Community MO&O*, *supra*. In this instance Boulder will continue to receive local transmission service from Stations KGNU(FM), Channel 203A, KBCO-FM, Channel 247C, as well as from full time AM Stations KBCO and KBKS.

<sup>6</sup> Petitioner advises that Stations KZDG(FM), Channel 223C1, Greeley, CO, KTCL(FM), Channel 227C, Fort Collins, CO, KBCO-FM, Channel 247C, Boulder, CO, KQKS(FM), Channel 282C1, Longmont, CO, and KSIR-FM, Channel 296C1, Brush, CO, are but a few of the stations that are predicted to provide service to Station KRKS-FM's 1 mV/m loss area.

show that Lafayette is sufficiently independent of Denver to merit a first local service preference or whether it should be credited with all of the authorized aural services in the Denver urbanized area.<sup>7</sup>

5. In consideration of the above, we preliminarily believe that the public interest would be served by proposing to reallocate Channel 234C to Lafayette and modifying the authorization for Station KRKS-FM accordingly, since unless demonstrated otherwise, petitioner's proposal would result in a preferential arrangement of allotments and would not deprive Boulder of local service. Therefore, we shall propose to modify the petitioner's license for Station KRKS-FM to specify Lafayette as its community of license. Pursuant to the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 234C at Lafayette, Colorado, or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

6. Channel 234C can be allotted to Lafayette consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at the petitioner's specified site located 49.3 kilometers (30.6 miles) southwest of the community at coordinates 39-40-35 and 105-29-09.

7. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

Channel No.		
City	Present	Proposed
Boulder, Colorado	234C, 247C	247C
Lafayette, Colorado	--	234C

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **May 21, 1996**, and reply comments on or before **June 5, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

James P. Riley, Esq.  
Fletcher, Heald & Hildreth, P.C.  
1300 North 17th Street, 11th Flr.  
Rosslyn, VA 22209-3801

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or

<sup>7</sup> See *Huntington Broadcasting Co. v. F.C.C.* 192 F.2d 33 (D.C. Cir. 1951), *RKO General, Inc. ("KFRC")*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck ("Tuck")*, 3 FCC Rcd 5374 (1988). In *KFRC* and *Tuck*, the Commission clarified the type of evidence to consider in determining whether a suburban com-

munity deserves a first local service preference by relying on three factors: signal population coverage; size of the suburban community relative to the adjacent community; and the interdependence of the suburban community with the central city.

incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.